



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/620,641	03/22/96	FREIBERGER	I0359-1130US

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EXAMINER

BRIER, J

ART UNIT	PAPER NUMBER
2775	26

DATE MAILED: 07/23/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Advisory Action

Application No.  
**08/620,641**

Applicant(s)  
**Frieberger et al**

Examiner  
**Jeffery A. Brier**

Group Art Unit  
**2775**



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires four months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jun 14, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

### ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
  - ☐ they raise the issue of new matter. (See note below).
  - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The deletions in claim 49 raise new issues. Also see pages 2 to 7.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: 13, 20, 32-40, 47, 51-53, 58, and 65

Claims rejected: 1-12, 14-19, 21-31, 41-46, 48-50, 54-57, 59-64, 66, and 67

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Other

**JEFFERY A. BRIER**  
**PRIMARY EXAMINER**  
**ART UNIT 2775**

Art Unit: 2775

### **ADVISORY ACTION CONTINUED**

1. The rejection of claims 1-20, 22-47, and 49-67 based upon the Schena PCT publication is withdrawn since was published on October 3, 1996, well after this application's filing date.

#### ***1.131 Declaration***

2. The Piernot declaration filed on 6/14/99 under 37 CFR 1.131 has been considered but is ineffective to overcome the Judson (pat. No. 5,572,643) reference.

3. The Judson (Patent No. 5,572,643) reference is a U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the patent is claiming the same patentable invention, see MPEP § 2306. The patent can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings.

4. Claims 1-12, 14-19, 21-31, 41-46, and 48-50, 54-57, 59-64, 66, and 67 are rejected by Judson. Claims 19, 21, 22, 46, and 48 are rejected by Pirani.

5. Claims 13, 20, 32-40, 47 51-53, 58, and 65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant should note that in claim 32

Art Unit: 2775

some awkward language exists at line 3 “the idle period”. Applicant should review this to determine if applicant is referring to an inherent idle period or to an idle period defined in another claim.

***Response to Arguments***

6. This display of content data in this application has two main modes of operation:

(1) display content data during inactive periods (screen saver embodiment) (Goodhead and Frieberger make allegations in the declarations, Piernot provides facts for screen saver embodiment in the declarations); and

(2) display content data in unobtrusive manner (wallpaper embodiment and display area embodiment) (Piernot provides facts for wallpaper and display area embodiments in the declarations).

7. On page 34 applicant argues that Judson does not teach claims 4, 11-13, 17, 30, 35-40, 44, 51-59, and 65 these arguments are not persuasive for the following reasons:

For claim 4: the application management system and third communication means is inherent to the Web browsers used in Judson.

For claim 11: embedded in the web data for the first link is content data which is displayed when the user choose to go to another link. The means for doing this is the claimed “means for determining”, “means for identifying”, and “means for causing”.

Art Unit: 2775

For claim 12: figure 6 of Judson teaches this claim.

For claim 13: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 1 would be allowable.

For claim 17: Web data is both visual and audio, thus, the content data of Judson presented to the user when a new link is selected includes both audio and visual data. In addition it is not clear how a display for displaying image data displays audio data.

For claim 30: claim 30 depends upon claim 19 and claim 19 does not claim a means for detecting so this limitation may be ignored or considered as a dangling component. As a dangling component it is met by the screen saver of the operating systems listed on column 4 line 36.

For claim 35: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 33/19 would be allowable or if claim 33 is written into independent form to include the limitations of claim 19.

For claim 36: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 33/19 would be allowable or if claim 33 is written into independent form to include the limitations of claim 19.

For claim 37: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 33/19 would be allowable or if claim 33 is written into independent form to include the limitations of claim 19.

Art Unit: 2775

For claim 38: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 33/19 would be allowable or if claim 33 is written into independent form to include the limitations of claim 19.

For claim 39: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 33/19 would be allowable or if claim 33 is written into independent form to include the limitations of claim 19.

For claim 40: This claim would be allowable if claim 35 is rewritten with the limitations of claim 33/19 and this claim is dependent upon the rewritten claim or if claim 33 is written into independent form to include the limitations of claim 19.

For claim 44: Web data is both visual and audio, thus, the content data of Judson presented to the user when a new link is selected includes both audio and visual data. In addition it is not clear how a display for displaying image data displays audio data.

For claim 51: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 50 would be allowable.

For claim 52: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 50 would be allowable.

Art Unit: 2775

For claim 53; This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 49 would be allowable.

For claim 54: In Judson the duration is defined by the HTML program as the time that is needed to the second link to be downloaded.

For claim 55: see arguments above for claim 54.

For claim 56: see arguments above for claim 54.

For claim 57: see arguments above for claim 54.

For claim 58: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 49 would be allowable.

For claim 59: figure 6 of Judson teaches this claim.

For claim 65: This claim has been reviewed again. The limitation in this claim is not seen in Judson. Thus this limitation when rewritten with the limitations of claim 64/61/49 would be allowable.

8. On page 34 last paragraph applicant argues that claim 1 is not taught by Judson. This is not correct because the browser of Judson would send a set of instruction to the display section in order for the display section display the content. The HTML program described by Judson is such a program.

Art Unit: 2775

9. On page 35 first paragraph applicant argues that claim 49 is not taught by Judson. This is not correct because the browser of Judson would send instructions which provide temporal constraints. The HTML program described by Judson is such a program. Display the message after a new link has been selected by the user and cease the display when downloading of the second link is complete.

10. On pages 35 to 36 applicant presents arguments concerning the PointCast article. Since the 6/14/99 Piernot declaration is effective in antedating the PointCast article, a response to these arguments is not necessary.

11. On pages 36 to 38 applicant argues that Pirani does not teach the claimed invention for numerous reasons. Pirani teaches *engaging the peripheral attention of a person* in figures 3 to 8 where it is shown advertisements displayed with the remainder of the software display such as figure 8's advertisement (14) for Babycola. In Pirani the *means for acquiring a set of content data from a content providing system* is the source of advertisements. In Pirani the *means for selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the apparatus from a primary interaction with the apparatus, an image or images generated from the set of content data* is the means shown in figures 1 which places the advertisements in figures 3-8 in locations which do not interfere with the user interaction with the software.




Art Unit: 2775

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery A. Brier whose telephone number is (703) 305-4723. The examiner can normally be reached on Mondays through Fridays from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Saras, can be reached on (703) 305-9720. The fax number is (703) 308-6606.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800.

July 20, 1999

  
JEFFERY BRIER  
PRIMARY EXAMINER